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1996, No. 37

**An Act to implement in the law of New Zealand the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction**

[24 June 1996]

BE IT ENACTED by the Parliament of New Zealand as follows:

**1. Short Title and commencement**—(1) This Act may be cited as the Chemical Weapons (Prohibition) Act 1996.

(2) This Act shall come into force on a date to be appointed by the Governor-General by Order in Council.

## PART I

### PRELIMINARY

**2. Interpretation—**(1) In this Act, unless the context otherwise requires,—

“Convention” means the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, done at Paris on the 13th day of January 1993 (a copy of the English text of which is set out in the Schedule to this Act), and includes the Annexes to the Convention and any amendments to, or substitutions of, that Convention or the Annexes that are, or will become, binding on New Zealand from time to time;

“International inspector” means an individual designated by the Technical Secretariat according to the procedures as set forth in Part II, Section A, of the Verification Annex, to carry out an inspection or visit in accordance with the Convention, and includes any inspection assistant as defined in the Convention;

“Minister” means the Minister of the Crown who, under the authority of any warrant or with the authority of the Prime Minister, is for the time being responsible for the administration of this Act;

“Secretary” means the Secretary of Foreign Affairs and Trade.

(2) Terms and expressions used and not defined in this Act but defined in the Convention shall, unless the context otherwise requires, have the same meaning as in the Convention.

**3. Act binds the Crown—**This Act binds the Crown.

**4. Purpose—**(1) The purpose of this Act is to implement New Zealand's obligations under the Convention.

(2) Every person exercising a power or discretion conferred under this Act must have regard to New Zealand's obligations under the Convention.

**5. Extraterritorial application of Part II—**(1) The provisions of Part II of this Act extend to acts done or omitted to be done outside New Zealand—

(a) By any New Zealand citizen or by any person ordinarily resident in New Zealand; or

(b) By any other person on board any New Zealand ship or New Zealand aircraft.

(2) Notwithstanding anything in any other enactment, proceedings in respect of any contravention of Part II of this Act anywhere outside New Zealand shall not, by virtue only of the provisions of this Act, be instituted in any Court except with the consent of the Attorney-General and on his or her certificate that it is expedient that the proceedings should be instituted.

(3) Notwithstanding subsection (2) of this section, a person may be arrested, or a warrant for a person's arrest may be issued and executed, and the person may be remanded in custody or on bail, but no further or other proceedings shall be taken until the Attorney-General's consent has been obtained.

Cf. 1960, No. 47, s. 3 (3)

## PART II

### OFFENCES

**6. Chemical weapons—**(1) Every person commits an offence who intentionally or recklessly—

(a) Develops, produces, otherwise acquires, stockpiles, or retains chemical weapons; or

(b) Transfers, directly or indirectly, chemical weapons to another person; or

(c) Uses chemical weapons; or

(d) Engages in any military preparations to use chemical weapons; or

(e) Assists, encourages, or induces, in any way, any person to engage in any activity prohibited to a State Party under the Convention,—

and is liable on conviction on indictment to imprisonment for life or a fine not exceeding \$1,000,000.

(2) Nothing in subsection (1) of this section applies in respect of any seizure of chemical weapons by the Crown under the authority of this or any other Act.

(3) Nothing in subsection (1)(e) of this section limits the provisions of Part IV of the Crimes Act 1961.

Cf. Chemical Weapons (Prohibition) Act 1994 (Australia) No. 26, s. 12

**7. Forfeiture of chemical weapons—**If any chemical weapon is developed, produced, otherwise acquired, stockpiled, retained, or transferred in contravention of section 6 of this Act, the weapon—

(a) Is forfeit to the Crown; and

(b) May be seized without warrant by any officer of the Crown; and

(c) Shall be stored pending disposal, and disposed of, as the Minister thinks fit.

**8. Riot control agents**—Every person commits an offence who intentionally or recklessly uses riot control agents as a method of warfare, and is liable on conviction on indictment to imprisonment for life or a fine not exceeding \$1,000,000.

**9. Schedule 1 toxic chemicals**—(1) Every person commits an offence who intentionally or recklessly produces, acquires, retains, or uses any Schedule 1 chemical without the consent of the Secretary, and is liable on summary conviction to imprisonment for a term not exceeding one year or a fine not exceeding \$100,000.

(2) In determining whether or not to give consent, the Secretary shall be guided by the provisions of Part VI of the Verification Annex.

**10. Imports and exports of toxic chemicals and precursors**—(1) Except with the consent of the Secretary, the importation into New Zealand, and the exportation from New Zealand, of any toxic chemical or precursor listed in Schedules 1, 2, and 3 of the Annex on Chemicals is hereby prohibited.

(2) In determining whether or not to give consent, the Secretary shall be guided by the restrictions on transfer set out in Parts VI to VIII of the Verification Annex.

(3) Every person commits an offence who imports or exports any chemical or precursor in contravention of subsection (1) of this section, and is liable on summary conviction to imprisonment for a term not exceeding one year or a fine not exceeding \$100,000.

**11. Application of Customs and Excise Act 1996**—All the provisions of the Customs and Excise Act 1996 that apply with respect to prohibited imports and prohibited exports (except the penalty for an offence against section 209 (1) (a) or (b) of that Act) shall extend and apply with respect to chemicals and precursors whose importation and exportation is prohibited by section 10 of this Act, in all respects as if the importation or exportation of the goods were prohibited under Part V of the Customs and Excise Act 1996.

### PART III

#### INFORMATION AND DOCUMENTS

**12. Purpose of this Part**—(1) The purpose of this Part of this Act is to ensure—

(a) That toxic chemicals and their precursors are only developed, produced, otherwise acquired, retained, transferred, or used for purposes not prohibited under the Convention; and

(b) That the Secretary has knowledge of dealings with chemicals that facilitates the making of New Zealand's periodic declarations under the Convention; and

(c) That New Zealand is otherwise able to fulfil its obligations under the Convention.

(2) Any power under this Part of this Act may be exercised only for that purpose.

**13. Supply of information**—(1) Any person who produces, acquires, retains, transfers, or uses toxic chemicals or their precursors to which any provision of Parts VI to IX of the Verification Annex applies must—

(a) Notify the chemicals and, as the case may be, the facility to the Minister as soon as practicable after this section commences to apply to the chemicals or facility, by giving written notice in a form approved by the Secretary, containing such information as is required by the form; and

(b) Keep records in relation to the chemicals and the facility, and the purpose to which the chemicals are put; and

(c) Prepare, from those records, periodic reports relating to the chemicals and the facility in a form approved by the Secretary; and

(d) Send those periodic reports to the Secretary at intervals specified by the Minister or by regulation.

(2) The records and reports under subsection (1) (b) to (d) of this section must be sufficient to satisfy the Minister that the Convention and the provisions of this Act and any regulations made under this Act are being complied with.

(3) Every person who refuses or fails, without reasonable excuse, to comply with subsection (1) of this section commits an offence, and is liable on summary conviction to imprisonment for a term not exceeding one year or a fine not exceeding \$100,000.

**14. Secretary may seek information—**(1) This section applies if the Secretary considers that any person is capable of giving information that is relevant to—

- (a) A declaration required to be given by New Zealand to the Organization under the Convention; or
- (b) The implementation of the Convention or the enforcement of this Act.

(2) The Secretary may, by written notice given to a person, require the person to give such information to the Secretary,—

- (a) If the person is a natural person, by writing signed by the person; or
- (b) If the person is a body corporate, by writing signed by an officer authorised to sign on behalf of the body corporate,—

within such reasonable period and in such manner as is specified in the notice.

(3) The Secretary may, by written notice given to a person, require the person to give to the Secretary particular documents, or documents of a particular kind, specified in the notice, within such reasonable period as is specified in the notice.

(4) Every person who, without reasonable excuse, fails to comply with a notice under this section to the extent that the person is capable of complying with it commits an offence and is liable on summary conviction to imprisonment for a term not exceeding one year or a fine not exceeding \$100,000.

(5) The power of the Secretary under this section to require a person to give information or documents to the Secretary is in addition to any obligation to give information or documents that the person may have under section 13 of this Act.

Cf. Chemical Weapons (Prohibition) Act 1994 (Australia) No. 26, s. 31

**15. False or misleading statements and documents—**Every person commits an offence who, in any document prepared pursuant to this Part of this Act, makes a statement or omits any matter knowing that, or being reckless as to whether, the statement or omission makes the document false or misleading in a material particular, and is liable on summary conviction to imprisonment for a term not exceeding one year or a fine not exceeding \$100,000.

#### PART IV INSPECTIONS

**16. Purpose of this Part—**The purpose of this Part of this Act is to facilitate inspections under the Convention by—

- (a) Confirming the right of international inspectors to inspect facilities and other places in New Zealand in accordance with the Convention and any facility agreement; and
- (b) Enabling New Zealand officers to secure access for any international inspector where consent cannot be obtained; and
- (c) Enabling New Zealand officers to accompany or assist any international inspector.

#### *Access by International Inspectors*

**17. Verification of toxic chemicals—**All toxic chemicals and their precursors listed in Schedules 1, 2, and 3 of the Annex on Chemicals, facilities related to such chemicals, and other facilities and places as specified in the Verification Annex, are hereby declared to be subject to verification measures as provided in the Convention.

**18. Inspections—**Every person must permit an international inspector to—

- (a) Enter any place in New Zealand—
  - (i) In respect of which any provision of Parts VI to IX of the Verification Annex applies; or
  - (ii) That is subject to an on-site challenge inspection referred to in paragraph 8 of Article IX of the Convention; or
  - (iii) In respect of which an investigation under paragraph 9 of Article X of the Convention has been initiated; and
- (b) Inspect the place pursuant to the Convention and, in the case of any facility, any applicable facility agreement; and
- (c) Exercise, in connection with the inspection, any function contemplated, and exercise any power provided for, in the Convention and, in the case of any facility, any applicable facility agreement.

**19. Persons who may accompany international inspectors—**In order to facilitate inspections, an international inspector may be accompanied by—

- (a) An observer for the purposes of giving effect to paragraph 12 of Article IX of the Convention;
- (b) Any person appointed by the Minister under section 21 of this Act;
- (c) Any member of the Police.